

STATE OF MICHIGAN
COURT OF APPEALS

In re Peter and Antonia Bartholomew Joint Trust.

ANTONIA BARTHOLOMEW,

Petitioner-Appellant,

v

ALAN A. MAY, Trustee,

Respondent-Appellee.

UNPUBLISHED

June 20, 2006

No. 267098

Wayne Probate Court

LC No. 2002-649511-TV

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Petitioner, Antonia Bartholomew, appeals as of right an opinion and order granting summary disposition and sanctions in favor of respondent, Alan A. May, Trustee, in this action involving a petition for determination of title of trust property and supervision of a trust. Because petitioner's arguments on appeal are unpersuasive and in large part of arguable legal merit, we affirm the probate court's grant of summary disposition in favor of respondent as well as the probate court's award of sanctions against petitioner and her attorney.

Petitioner and her husband, Peter Bartholomew, executed the Peter and Antonia Bartholomew Joint Trust ("the trust") in June 2001, approximately six months after they were married. At the time of the hearing in the probate court, Peter Bartholomew was 87 years of age and was incapacitated due to injuries he suffered following a "suspicious fire" at his home. The probate court appointed respondent as Peter Bartholomew's guardian and conservator in a separate proceeding before the probate court. Based on allegations that petitioner mismanaged trust assets, Daniel Bartholomew, Peter Bartholomew's son, petitioned the probate court for supervision of the trust in May 2002. Following highly contested proceedings, petitioner and Daniel Bartholomew ultimately reached a settlement resulting in the probate court appointing respondent as successor trustee in July 2002.

Petitioner challenged respondent's appointment in 2003 when she filed petitions to terminate or modify the guardianship and conservatorship. Petitioner sought to have respondent removed as guardian and conservator and herself assume control. Again, the parties were able to settle the matters in September 2003. The settlement outlined a detailed monetary allowance for petitioner and also allowed respondent to remain in his position. The probate court dismissed

both petitioner's petitions with prejudice. In March 2004, petitioner filed the present petition wherein she sought to have: the title to certain trust property determined, the order granting supervision of the trust terminated or modified, and respondent's appointment as successor trustee terminated. Respondent sought summary disposition, dismissal of petitioner's entire claim, and sanctions levied against petitioner and her attorney. The probate court granted respondent's motion for summary disposition pursuant to both MCR 2.116(C)(8) and (C)(10) and awarded reasonable attorney fees and costs as sanctions against petitioner and her attorney. It is from this order, that petitioner now appeals.

We review a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone." *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). "This Court reviews de novo a trial court's decision regarding a motion for summary disposition under MCR 2.116(C)(8) to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Id.* In reviewing a trial court's decision on a (C)(8) motion, we accept as true all factual allegations in the complaint and reasonable inferences that may be drawn from them. *Id.* "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

Petitioner first argues that the probate court erred when it found petitioner's petition barred by operation of both res judicata and collateral estoppel. Petitioner also assigns error to the probate court's finding that the petition was in effect an untimely petition for reconsideration of its July 2002 order. Respondent counters that all issues presented by petitioner in the current action were already presented to the probate court in earlier proceedings and the court issued final orders resolving those matters, thus relitigation of the issues is barred. This Court reviews a trial court's decision concerning a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). We review de novo whether a suit or an issue is barred under the doctrines of res judicata or collateral estoppel. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004); *Minicuci v Scientific Data Mgt, Inc.*, 243 Mich App 28, 34; 620 NW2d 657 (2000).

The record in this case reflects that petitioner challenged respondent's appointment as successor trustee in the 2002 proceedings before the probate court. In 2002, petitioner was represented by counsel and the parties litigated issues regarding supervision of the trust and respondent's appointment as successor trustee. Ultimately the parties settled the matter and the settlement was memorialized in a final order of the probate court. After carefully reviewing the record, we agree with the probate court that based on the substance of the matter, petitioner's current petition before the probate court is merely a disguised motion for reconsideration of the probate court's earlier 2002 final order. It is therefore untimely because petitioner did not file it within fourteen days of entry of the 2002 order. MCR 2.119(F)(1). Under these facts, we need not review the probate court's conclusions regarding both res judicata and collateral estoppel, since relitigation of respondent's appointment as successor trustee in this action is precluded because it is untimely pursuant to MCR 2.119(F)(1).

Petitioner next argues that the probate court erred when it determined as a matter of law that no genuine issue of material fact existed regarding its finding that a parcel of land in Montmorency County, Michigan (“the Montmorency property”) never belonged to the trust. After reviewing the documentary evidence provided by the parties, the probate court found that the Montmorency property “never belonged in a Trust and, in fact, was transferred by Peter and Antonia Bartholomew prior to [the probate court’s] involvement in this matter.” Our review of documentary evidence in the record also reveals that the Montmorency property never belonged in the trust since Peter Bartholomew sold the Montmorency property on land contract to James M. Waldecker prior to the execution of the trust. Because no genuine issue of material fact exists on this record to warrant a trial, respondent is entitled to summary disposition pursuant to MCR 2.116(C)(10). *Walsh, supra* at 621.

Next, petitioner argues that that probate court erred when it found as a matter of law that petitioner’s request to terminate or modify the probate court’s order granting supervision in this matter as well as petitioner’s request to terminate the appointment of respondent as successor trustee were untimely as petitions for relief from judgments pursuant to MCR 2.612. MCR 2.612(C)(2) states that motions for relief from judgment premised on the discovery of new evidence “must be made within . . . one year after the judgment, order, or proceeding was entered or taken.” The probate court found, and we agree, that petitioner was arguing she was entitled to relief based on alleged newly discovered evidence that respondent was ineffective in performance of his duties as successor trustee pursuant to MCR 2.612(C)(1)(b). As such, according to MCR 2.612(C)(2), petitioner had one year to file for relief from judgment from the probate court’s entry of the supervision order. The record reflects that petitioner missed the allotted time frame to seek relief pursuant to MCR 2.612(C)(2) and therefore the probate court did not err.

Finally, petitioner asserts that the probate court committed clear error when it determined that petitioner’s petitions were frivolous. A party who maintains a frivolous suit is subject to sanctions. *BJ’s & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 404; 700 NW2d 432 (2005). “The purpose of imposing sanctions for asserting frivolous claims ‘is to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose.’” *Id.* at 405. We review a trial court’s determination that an action is frivolous and that sanctions should be awarded for clear error. *Id.*

MCR 2.114(A) and (C) require that documents, including pleadings and motions, be signed and, if a party is represented by an attorney, the attorney must sign the document. The signature of the attorney or a party, if not represented, constitutes a certification by the signer that:

- (1) he or she has read the document;
- (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. [MCR 2.114(D).]

MCR 2.114(E) provides that sanctions may be ordered against the person who signs a document in violation of the rule, a represented party, or both. MCR 2.114(F) further provides that, in addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2), which states:

In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.

MCL 600.2591 states:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) “Frivolous” means that at least 1 of the following conditions is met:

(i) The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party’s legal position were in fact true.

(iii) The party’s legal position was devoid of arguable legal merit.

After reviewing the record, we find no clear error in the trial court’s decision to award sanctions. This matter is frivolous because petitioner merely presents issues already litigated by the identical parties. A reasonable investigation of applicable law would have shown that relitigation of these issues was barred. Further, in support of its finding that sanctions in the form of reasonable attorney fees and costs were appropriate, the probate court pointed to a guardian ad litem report filed with the probate court. The probate court relied on the guardian ad litem’s assessment that petitioner had filed her present motion to remove respondent based on improper motives. The report stated in part that “[i]n short, it appears [petitioner] is using the current Petition as an end run around the previous settlement agreements that have been placed on the record.”

We agree with the probate court's evaluation that petitioner's "latest motion was filed without arguable legal merit and was simply prepared as a means to again improperly attempt to regain control of her husband's remaining assets through the Trust, even though she had previously entered settlement agreements in both the guardianship/conservatorship cases determining these issues." The probate court did not clearly err because under the circumstances of this case, petitioners legal arguments were devoid of legal merit and sanctions of reasonable attorney fees and costs against petitioner and her attorney are proper.

Affirmed.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio